

**THE INDIANA CIVIL RIGHTS COMMISSION
311 West Washington Street
Indianapolis, Indiana 46204**

**STATE OF INDIANA)
)
COUNTY OF MARION)**

**JAMES H. TRICE AND
CHESTER L. BARBOUR,
Complainant,**

**DOCKET NO. 04642 (B) and
04645 (B)**

vs.

**CHRYSLER CORPORATION,
Respondent.**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On May 27, 1981, Kenneth W. Maher, Hearing Officer in the above cause, entered his recommended Findings of Fact, Conclusions of Law and Order. Neither party has filed objections that recommendation within the ten (10) day period prescribed by IC 4-22-1-12 and 910 IAC 1-12-1(B).

Being duly advised in the premises, the Commission hereby adopts as its final Findings of Fact, Conclusions of Law and Order those recommended in the Hearing Officer's Recommended Findings of Fact, Conclusions of Law, and Order, which is attached hereto and incorporated by reference herein.

Dated: July 17, 1981

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RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The undersigned Hearing Officer was appointed to hear the above captioned cases and all parties were notified of said appointments prior to the commencement of these consolidated hearings held on March 3, March 4, and March 5, 1981.

Complainants, James H. Trice and Chester L. Barbour (hereinafter "Complainants"), were present at the hearing and were represented by counsel, Mr. Carr L. Darden. Respondent Chrysler Corporation (hereinafter "Respondent") was represented by counsel, Ms. Susan B. Tabler.

Having considered the official record, including the evidence admitted at the hearing, depositions, affidavits, arguments of counsel, briefs, and Proposed Findings of Fact, Conclusions of Law and Order submitted by each, and being duly advised in the premises, the Hearing Officer hereby recommends the entry of the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Complainants, James H. Trice and Chester L. Barbour, are Black male citizens of the State of Indiana.
2. Complainant Chester Barbour has been employed by Respondent from 1971 through the present. Originally employed as an Inspector, he presently serves as an apprentice Die Cast Maker.
3. Complainant James Trice has been employed by Respondent from 1969 through the present. Originally employed as an Inspector, he presently holds a journeyman position as Die Cast Maker.
4. On or about midnight on August 14, 1973, two second-shift employees, Dunn (black) and Holder (white), engaged in a fight while at work. Both employees were suspended for misconduct pending a full investigation of the fighting incident. Dunn and Holder were told to report to the Employment Office at 3:00 pm on August 15, 1973, for disposition of their cases.
5. At 3:00 pm on August 15, 1973, a meeting was held in the Employment Office involving Dunn, Holder, and representatives of Respondent and representatives of the employees' union. While this meeting was in session, a group of 8-12 black employees, including the Complainants, congregated in the lobby of the Employment Office. None of these employees created a disturbance in the Employment Office, none of them were told to leave, and none of them were disciplined as a result of their presence in the Employment Office.
6. As a result of the meeting between the company and union involving the Dunn/Holder matter, the Respondent determined that both Dunn and Holder would be discharged for fighting. Following this determination, Dunn went out into the lobby of the Employment Office and told the group of black employees that he had been discharged. At the same time, the union President, Harry Nelson, told the group of black employees in the Employment Office lobby that the union would continue to negotiate with the company concerning the Dunn/Holder cases.

7. The group of black employees then left the Employment Office and proceeded through the plant towards the Production Office.

8. The evidence was conflicting as to whether the black employees in the group were authorized to enter the Production Office on August 15, 1973.

9. When the black employees reached the Production Office, someone kicked open the door between the hallway and the Production Office with such force that the door banged against the file cabinets. As a result of this kicking, the hinges of the door were so bent that the door would not close thereafter, and the door had to be repaired by the maintenance crew. Although it is not clear from the evidence who actually kicked open the door, it is clear that some of the management personnel present believed that it was the Complainant Barbour.

10. As soon as the door was kicked open, the black employees rushed into the Production Office and confronted Morris Covey, the Product Shift Superintendent, and other management officials in the Production Office at the time. For approximately 20 minutes, the black employees remained in the Production Office complaining about the discharge of Dunn and other matters. They raised their complaints in a manner that was belligerent and abusive. The black employees yelled and shouted at the management officials, with arms waiving and fingers pointed, and numerous Obscenities and threats were made by the black employees to the management officials. One black employee tore up the Plant Rules with the statement, *"this is what we think of your fucking rules."* The management officials in the Production Office at the time, Covey, Miller, Whitehead, described the situation as "explosive", and testified that they were "frightened" for the well being as a result of the conduct of the black employees.

11. While the Black employees were in the Production Office the Personnel Manager, Tom Beaty, addressed the group and told them that he would not negotiate with them as a group. On at least two occasions during the confrontation, Mr. Beaty directed the black employees to leave the Production Office; however, his commands were ignored, and the black employees did not leave pursuant to Mr. Beaty's instructions.

12. Complainant Trice appeared to be one of the two main leaders of the group. Trice was at least partly responsible for summoning the group together in the Employment Office on August 15, 1973; he was the member of the group who suggested going to the Production Office; he was one of the first employees into the Production Office and, during the entire confrontation, he stood at the front of the group, nearest to management officials, and took it upon himself to address the management officials on behalf of the group; he uttered most of the audible comments to the management officials in the Production Office, with the other back employees echoing his remarks; and he threatened to *“burn this mother-fucking place down”*. Ultimately, the union Vice President, James Bitner, who had entered the Production Office in the course of the confrontation summoned Complainant Trice out in the hall and told him to get the black employees to leave. The group of black employees left the Production Office only after Complainant Trice directed them to do so.

13. Complainant Barbour was observed in the Production Office with a heavy mop-wringer assembly in his hand. Management personnel believed he carried it as a weapon. He had no legitimate reason in the course of his job to have possession of a mop-wringer assembly, now was there any legitimate reason for him to bring the mop-wringer assembly into the Production Office on August 15, 1973. During the course of the confrontation, Complainant Barbour kept the mop-wringer assembly remained in the Production Office. Also, during the course of the confrontation, Complainant Barbour left the Production Office at one point to round up the “brothers”.

14. After the group disbanded and following consultation and investigation among Respondent’s management officials, Respondent determined the discipline to be imposed upon the various black employees for their conduct in the Production Office on August 15, 1973. Four of the employees, including the Complainants, were discharged for engaging in the most egregious misconduct in the Production Office, e.g., conduct that was perceived as violent or threatening. Complainant Trice was discharged on the grounds that he “verbally abused and threatened supervision; threatened destruction of company property;

refused to follow supervisory instructions; and violated Section 5 of the Production and Maintenance Agreement.” Complainant Barbour was discharged on the grounds that he “verbally abused and threatened supervision; made an unauthorized entry into the Plant; and refused to follow supervisory instructions.” Less severe disciplinary penalties were imposed upon others of the employees who engaged in lesser misconduct, and some of the black employees in the Production Office on August 15th who were not particularly violent or abusive received no discipline whatsoever. The notices of termination to the Complainants were issued on August 18, 1973, and were effective as of that date.

15. Following their discharges, the Complainants filed grievances protesting the discharges through the grievance and arbitration processes established under the collective bargaining agreement between the Respondent and the Complainants’ union. The union processed the Complainants grievances through to arbitration, and arbitration hearings were conducted before the Arbitrator, Gabriel N. Alexander concerning the terminations of the Complainants. At these arbitration hearings, the Complainants were represented by the union, and the Complainants were afforded full opportunity to present evidence concerning their cases.

16. On April 30, 1974, Arbitrator Alexander rendered his decision in the Complainants arbitration cases. The Arbitrator found that, although the Complainants had engaged in misconduct on August 15, 1973, in violation of the collective bargaining agreement, the penalty of discharge was too severe in both cases. Accordingly Arbitrator Alexander ordered that the discharge of Complainant Trice be modified to a sixty day disciplinary suspension without pay and that the discharge of Complainant Barbour be modified to a disciplinary suspension of approximately nine months without pay. Both Complainants were ordered reinstated by the Arbitrator at the expiration of the disciplinary suspension.

17. Except for the incident on August 15, 1973, representatives of the Respondents had never been confronted in such a fashion by a group of unruly

employees regardless of race. However, prior to the incident on August 15, 1973, two white employees, Colmer and Penley, were discharged for individual abusive conduct towards supervisors. Colmer was discharged for threatening a supervisor with a hammer, and Fenley was discharged for refusing to leave the premises upon the direction of a supervisor. There is no evidence of any white employees engaging in the same misconduct as the Complainants who received any disciplinary penalty less than discharge.

18. The Complainants, as well as other black employees involved in the incident of August 15, 1973, had previously protested alleged civil rights violations through lawful channels without penalty from the Respondent. Prior to 1973, groups of black employees had held peaceful meetings with Mr. Covey and Mr. Corrigan, the Plant Manager, to discuss alleged discriminatory treatment of blacks. In addition, many black employees had talked to various supervisors and union officials in a peaceful fashion regarding their concerns. Also, a number of the black employees, including the Complainants, had engaged in a peaceful demonstration against Respondent in May 1973, and, later in the summer of 1973 prior to August 15th they had participated in a meeting with the NAACP and Chrysler officials from Detroit concerning civil rights problems. Finally, a number of the black employees, including the Complainants, had previously filed charges of discrimination with the Equal Employment Opportunity Commission, the Indiana Civil Rights Commission, the Office of Federal Contract and Compliance programs, and the National Labor Relations Board protesting various alleged acts of discrimination there was no evidence that any black employees received any discipline whatsoever by Respondent as a result of such incidents of peaceful and lawful protest.

19. Any Conclusion of Law which should have been deemed a Finding of Fact is hereby incorporated as such.

CONCLUSIONS OF LAW

1. Complainants James H. Trice and Chester L. Barbour are “employees” as that term is defined in IC §22-9-1-3(i) (1971).
2. The Respondent Chrysler Corporation is a “person” as that term is defined in IC §22-9-1-3(a) and is an “employer” as that term is defined in IC §22-9-1-3(h) (1971).
3. The Complaints herein were timely filed.
4. The Commission has jurisdiction over the parties and the subject matter of these Complaints.
5. Complainants failed to establish a *prima facie* case of disparate treatment because of race. Although the Complainants established that they are members of a protected class and that they received discipline, they did not produce evidence of disparate treatment from which a casual connection between their race and the discipline can be inferred. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973). Specifically, the Complainants failed to demonstrate that similarly situated white employees received more favorable treatment from the Respondent under similar circumstances. See *e.g.*, *Barnes v. St. Catherine’s Hospital*, 563 F.2d 324, 328-329 (7th Cir. 1977); *Long v Ford Motor Company*, 596 F.2d 500, 505-506 (6th Cir. 1974).
6. The Complainants failed to establish a *prima facie* case of retaliation for opposition to discriminatory practices. The Complainants did not demonstrate that the Respondent had a “retaliatory motive or intent” in disciplining them for their misconduct on August 15, 1973. *Ekanem v. Health & Hospital Corp.*, 589 F.2d 316, 320 (7th Cir. 1978). The totality of the evidence negates a *prima facie* showing of “retaliatory motive or intent” on the part of the Respondent for employee involvement in legitimate and lawful activities: there is no evidence of any black employee being disciplined or discharged for engaging in peaceful and lawful protests concerning alleged discrimination.
7. Even if the Complainants had established a *prima facie* case, Respondent has articulated a legitimate reason for the disciplinary action taken against the Complainants. *Texas Department of Community Affairs v. Burdine*, ____ U.S. ____, 67 L.Ed.2d 207, 215 (1981); *Board of Trustees of Keene State*

College v. Sweeney, 439 U.S. 24 (1978). First, the arbitrator's decision that the Respondent had just cause for disciplining the Complainant is convincing evidence on that issue. In addition, the Respondent's evidence that the Complainants conduct was perceived as violent, unlawful, and abusive satisfies the employer's burden in meeting the *prima facie* case. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-803. "Nothing in Title VII compels an employer to absolve...one who has engaged in such deliberate, unlawful activity against it." 411 U.S. at 803.

8. The Complainants have failed to demonstrate that the Respondents legitimate reasons for the Complainants discipline were in fact pretextual. The Evidence that white employees involved in similar acts against the employer received the same or more severe discipline, the evidence that the Respondent had not previously disciplined the Complainants for legitimate civil rights activities, and the evidence that the Respondent had not acted adversely to legitimate civil rights activities of any employees negates any inference of pretext. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 804-805 (1973).

9. The Complainants have failed to demonstrate that the Respondent committed a "discriminatory practice" as that term is defined in IC §22-9-1-3(1) (1971).

10. Although some of the evidence tended to indicate that the union might have failed to properly represent its black members prior to this incident, the union was not a party to these complaints at hearing because a finding of No Probable Cause had been entered by T. Beatrice Holland, Director, in November 1976. Therefore, no Conclusions or Order can be made as to the union.

11. Any Finding of Fact which should have been deemed a Conclusion of Law is hereby incorporated as such.

ORDER

The Complaints of the Complainants, James H. Trice and Chester L. Barbour, shall be dismissed for the reasons aforestated.

Dated: May 27, 1981